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NEW BEDFORD SCOPING MEETING
November 3, 2005

10 New Bedford Whaling Museum
18 Johnny Cake Hill
New Bedford, Massachusetts 02740

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Pages 1 to 44

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PROCEEDINGS

16:00:12 4 MODERATOR MICHAELSON: Good afternoon.

16:06:51 5 We're very gratified that so many of

16:06:54 6 you took the time and decided to stay after a

16:06:58 7 long conference, and we appreciate you being

16:07:00 8 here.

16:07:01 9 I think almost all of you, I see your

16:07:04 10 familiar faces, took advantage of the poster

16:07:06 11 sessions that were -- we had a little bit of

16:07:09 12 one on one and did some Q and A.

16:07:12 13 My name is Lewis Michaelson. I work

16:07:16 14 for Katz & Associates. We have been hired to

16:07:18 15 be involved in the public participation process

16:07:21 16 specifically to moderate the scoping meetings.
16:07:26 17 The purpose, as many of you may know,
16:07:29 18 but not all of you, scoping allows for early
16:07:32 19 public notification when the federal government
16:07:35 20 anticipates a proposed federal action of some
16:07:39 21 significance.

16:07:39 22 And in this particular occasion it
16:07:41 23 would provide the Marine Fisheries Service the
16:07:44 24 opportunity to present the proposed action to

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16:07:47 1 you here at this meeting, and, obviously, to
16:07:49 2 seek input on the scope of the EIS.

16:07:52 3 For your information we are holding
16:07:54 4 three such meetings. This is the first.
16:07:56 5 Obviously this is the one in New Bedford.

16:07:58 6 We are trying to take advantage of,
16:08:01 7 rather than you having to come to them, to go
16:08:03 8 to you, where you congregate. They did a
16:08:08 9 demographic study and we dotted -- no, that's
16:08:10 10 the right whale -- but you were congregating
16:08:15 11 here, and here we are, where you are.

16:08:17 12 And in a similar fashion, on December

16:08:19 13 10th we will be in San Diego at the 16th annual
16:08:23 14 conference on the biology of marine mammals,
16:08:26 15 another confluence of people that have an
16:08:28 16 interest in this subject.

16:08:29 17 And, finally, to both facilitate the
16:08:33 18 participation of government agencies and
16:08:37 19 non-governmental organizations, or NGOs, we
16:08:39 20 would be at Silver Springs on January 19th.

16:08:43 21 The agenda for today is pretty
16:08:45 22 straightforward. We have a couple of
16:08:47 23 presentations that will provide information on
16:08:50 24 the scoping process and the background of the

16:08:52 1 need for the process itself, and a quick
16:08:54 2 overview of the right whale research. My guess
16:08:56 3 is each one of you knows a little to a lot
16:08:59 4 about that, but this would be an opportunity
16:09:01 5 to, hopefully, look more comprehensively at the
16:09:05 6 scope of the research going on out there, which
16:09:07 7 is the subject of this EIS.

16:09:09 8 And a review of the proposed action
16:09:12 9 and alternatives followed by a, perhaps the

16:09:15 10 most important part, your opportunity to
16:09:17 11 comment.
16:09:20 12 In terms of the layout, I think most
16:09:23 13 all of you registered already at the processing
16:09:26 14 station. If you didn't, on your way out if you
16:09:29 15 don't mind doing that, that allows us to keep
16:09:31 16 you informed of the progress during the
16:09:33 17 development of the EIS. Take advantage of the
16:09:36 18 staff exhibit area, this is where the formal
16:09:39 19 presentation is and where we take comments.
16:09:41 20 I have three people that already
16:09:43 21 signed the speaker sign-up card. That's the
16:09:45 22 only thing that we ask of you, if you want to
16:09:47 23 make a comment this evening, is to fill one
16:09:47 24 out.

16:09:49 1 And those of you who did not do that,
16:09:51 2 that's available at the registration table
16:09:53 3 which we set up just outside this door.
16:09:55 4 Also, I know some people have taken
16:09:59 5 advantage of the written comment form, just
16:10:01 6 fill it out and bring that in and turn those in

16:10:02 7 tonight, you may.

16:10:03 8 I would also like to let you know

16:10:04 9 that Lisa is here with us here to take a

16:10:06 10 transcript of these proceedings here, and it

16:10:09 11 would be audio-taped to help with that purpose,

16:10:13 12 as well.

16:10:13 13 And with that I would like to turn

16:10:14 14 this over to Stephen Leathery for an overview

16:10:18 15 of the need of this process.

16:10:19 16 MR. LEATHERY: Thank you. And good

16:10:26 17 evening.

16:10:26 18 I appreciate everybody hanging around

16:10:29 19 tonight after the long meeting, and thank you

16:10:31 20 for coming, and would personally like to thank

16:10:33 21 the consortium for letting us present this

16:10:38 22 first of our series of scoping meetings.

16:10:41 23 And especially I want to emphasize

16:10:45 24 the importance of the involvement and

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16:10:47 1 cooperation of the right whale research

16:10:50 2 community in this effort, because you all are

16:10:55 3 the ones who know the most about the species

16:10:57 4 and the research needs and concerns.

16:11:00 5 So that's of vital importance in this

16:11:02 6 issue. And I really look forward to working

16:11:05 7 with everyone as we move forward on this.

16:11:09 8 I guess the other thing, you know,

16:11:14 9 this morning we had two excellent kick off

16:11:18 10 speakers. I don't know if everyone here

16:11:20 11 attended or not, but Diane gave a good overview

16:11:23 12 of the need for the process that she is

16:11:26 13 involved in, and that was a good, broad

16:11:29 14 overview of the NEPA role relative to the

16:11:32 15 rulemaking.

16:11:32 16 And then I want to focus on what

16:11:35 17 Sharon Young had to say about the overview of

16:11:38 18 the legal options available. And she

16:11:41 19 highlighted the legal vulnerability that the

16:11:45 20 agency takes on if we do not do adequate NEPA

16:11:49 21 analysis.

16:11:50 22 And the Humane Society of the United

16:11:53 23 States has sued us on the sea lion research

16:11:56 24 program. And that happened this summer. And

16:11:59 1 virtually all those permits are vulnerable to
16:12:03 2 being stopped by a federal judge when we go to
16:12:06 3 court. So that's the worst case scenario.
16:12:10 4 That's what we hope never happens with right
16:12:12 5 whales.

16:12:13 6 And we made the decision a while back
16:12:16 7 when money was scarce but became available,
16:12:18 8 that our first priority was doing the EIS on
16:12:22 9 right whale research, because of the vital
16:12:24 10 needs of conducting research in order to
16:12:27 11 conserve and recover the species; so I hope
16:12:33 12 everyone recognizes that this is the first
16:12:35 13 effort EIS on research permitting that's ever
16:12:38 14 been done.

16:12:39 15 So this has been our top priority and
16:12:42 16 remains my top priority, but with the
16:12:45 17 litigation, and the Navy, and those other
16:12:48 18 things looming on the horizon, there's a lot of
16:12:52 19 competing demands on me at this time.

16:12:53 20 And, you know, the litigation is
16:12:58 21 unfortunate, but it's a reality of the public
16:13:01 22 policy process. And if it wasn't for
16:13:05 23 litigation we might not ever have -- if it

16:13:09 24 wasn't for the litigation or the threat of

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16:13:10 1 litigation, we might not get the resources we

16:13:14 2 need to focus on some of these issues, both on

16:13:17 3 the regulatory legal side, that I struggle

16:13:19 4 with, as well as helping focus on the needs.

16:13:38 5 Here's the purpose of NEPA. These

16:13:40 6 are right out of legislative language, you

16:13:45 7 know, and you can read what they are. It's --

16:13:49 8 this is kind of broad, overview language, you

16:13:52 9 know, encourage harmony, promote efforts to

16:13:56 10 prevent or eliminate environmental damage,

16:13:59 11 enrich our understanding of the systems. The

16:14:01 12 importance, really, to the people here is that

16:14:04 13 we are -- by going through this process we've

16:14:08 14 very much reduced the legal vulnerability, we

16:14:11 15 are hoping to put together a bullet proof

16:14:14 16 regulatory program for right whales and, also,

16:14:16 17 we are front-loading and taking a comprehensive

16:14:20 18 approach to permitting by doing this NEPA

16:14:22 19 analysis.

16:14:27 20 Requirements of NEPA are to analyze

16:14:29 21 the potential environmental consequences of
16:14:32 22 federal agency actions and to consider the
16:14:34 23 environment consequences before deciding to
16:14:36 24 proceed, and this allows an opportunity for the

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16:14:39 1 public involvement in a number of key phases.

16:14:41 2 Generally NEPA is a sunshine law that
16:14:45 3 requires the federal government to take a hard
16:14:47 4 look, and an open look and involve the public
16:14:50 5 in that kind of broad, hard look at any
16:14:56 6 actions; and in this case the environmental
16:14:59 7 impacts of concern are the adverse and
16:15:02 8 beneficial effects of the outcomes from
16:15:05 9 research permits.

16:15:08 10 This is kind of a standard
16:15:10 11 boilerplate slide, the components of an EIS,
16:15:14 12 proposed action, and a number of alternatives
16:15:17 13 (indicating). I have to say, in this case, our
16:15:22 14 proposed action and alternatives are maybe a
16:15:24 15 little confusing, may not be like what other
16:15:27 16 people have seen before, and we would be glad
16:15:29 17 to talk more about what we propose.

16:15:31 18 And we really urge the community to
16:15:33 19 look at these alternatives and say, yeah, you
16:15:35 20 have got it right, or no, you do don't have it
16:15:38 21 right, here's what you really need to be
16:15:40 22 considering.

16:15:42 23 And in the documents it's
16:15:46 24 structured -- there's several sections in the

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16:15:48 1 documents of the proposed action and
16:15:50 2 alternatives, discussions that affect the
16:15:53 3 environment, potential environmental
16:15:54 4 consequences, mitigation, and consideration of
16:15:57 5 public input and comments. And we can talk
16:16:00 6 more about process, but at the final impact
16:16:03 7 stage, we actually have a formal response to
16:16:05 8 all the comments that are made on the draft so
16:16:07 9 there is -- you can see in there, at the end,
16:16:11 10 which comments were made and how we responded
16:16:13 11 to them (indicating).

16:16:15 12 Here is -- this is, again, typical in
16:16:18 13 the broad EIS world about the kinds of things
16:16:20 14 that are considered in environmental impact

16:16:24 15 statements (indicating).

16:16:24 16 In this case the take home focus is,
16:16:28 17 what did -- and our real concern is the whales,
16:16:32 18 and especially the last bullet is cumulative
16:16:36 19 impact (indicating). So the cumulative impact
16:16:37 20 of everything that we know that is going on,
16:16:39 21 and in the environment, and then anything that
16:16:42 22 may be on top of that either good or bad as a
16:16:45 23 result of research.

16:16:51 24 And this is a general process phase

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16:16:57 1 where the first sub-bullet of scoping, very
16:17:00 2 early in the process, we are going to work --
16:17:02 3 we will listen to your comments and we will
16:17:05 4 develop a draft EIS and we will publish a
16:17:09 5 notice of availability and send out copies to
16:17:12 6 people who are interested. And that's another
16:17:15 7 key point in this, of input for everyone who is
16:17:19 8 interested, when the draft is out, to make
16:17:21 9 comments on what we have in the draft, take a
16:17:24 10 real hard look at the analysis and range of
16:17:27 11 things that we are considering in more detail.

16:17:29 12 And we get comments on that.
16:17:31 13 And then we produce a final
16:17:34 14 environmental impact statement in that, a
16:17:37 15 response to all the comments that were made.
16:17:39 16 And once that's issued, there's a record of
16:17:41 17 decision.

16:17:44 18 Here's our tentative schedule. For
16:17:47 19 those of you that are familiar with NEPA
16:17:49 20 documents, you will recognize this as a
16:17:53 21 relatively ambitious schedule. We are trying
16:17:55 22 to get this moving as quickly as possible and
16:17:57 23 move through this process. And we plan to have
16:18:02 24 this done by the summer of -- next summer,

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16:18:05 1 basically.

16:18:10 2 And I guess at this point I will turn
16:18:14 3 it over to Carrie Hubard to discuss more of the
16:18:19 4 proposed action and alternatives.

16:18:31 5 MS. HUBARD: Good evening. If you
16:18:37 6 visited --

16:18:37 7 MODERATOR MICHAELSON: Speak louder,
16:18:37 8 please.

16:18:38 9 MS. HUBARD: Better? Okay.
16:18:39 10 So I would talk a little bit more
16:18:41 11 about the specifics of the proposed action, the
16:18:44 12 alternatives, and, actually, to start off with
16:18:47 13 a little information about the current state of
16:18:49 14 right whale research.

16:18:49 15 I know we can spend a day and a half
16:18:52 16 talking about that. But from the permitting
16:18:54 17 side, there are currently 13 active permits
16:18:57 18 issued for right whale takes, that includes two
16:19:00 19 in the Pacific, two that cover both coasts
16:19:03 20 having to do with stranded animals, and the
16:19:06 21 rest are in the Atlantic.

16:19:07 22 The expiration dates on the permits
16:19:10 23 range from 2006 to 2010. And, essentially,
16:19:13 24 these permits authorize 70 researchers, that's

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16:19:16 1 principal investigators with co-investigators,
16:19:19 2 to conduct research on right whales.

16:19:24 3 Again, we covered all the good
16:19:26 4 research in the last two days, but we are going
16:19:28 5 on -- but just to reiterate some of that, I

16:19:31 6 guess, this is the large category that right
16:19:34 7 whale research falls: Approach, observation,
16:19:39 8 past acoustic, photo ID, sampling, tissue
16:19:44 9 sampling, biopsy, tagging, ultrasound, and
16:19:50 10 plantable tags.
16:19:51 11 We heard about up and coming
16:19:54 12 technology from Professor Woodward, possible up
16:19:58 13 and coming tags, monitoring and aerial and
16:20:02 14 shipboard surveys, acoustics, playbacks, as
16:20:06 15 well as controlled exposure experiments and
16:20:11 16 distance responses. These are some of -- a
16:20:17 17 broad category of research identified by the
16:20:19 18 right whale recovery plan that are necessary
16:20:21 19 for recovery of the species we have.
16:20:23 20 Again, detection, which is looking
16:20:26 21 for the animal, distributions, entanglement,
16:20:30 22 stranding response, looking at contaminant
16:20:32 23 levels and overall reproduction and health and
16:20:35 24 habitat-use patterns and monitoring trends and

15

16:20:38 1 abundance distributions.
16:20:41 2 A little bit about the scope of the

16:20:44 3 EIS. In the Atlantic the EIS would be covering
16:20:48 4 the summering grounds of New England, the
16:20:52 5 migratory grounds along the mid-Atlantic, and
16:20:54 6 calving grounds of the Southeast, and as well
16:20:57 7 as research areas looking for right whale
16:21:00 8 habitat that is currently unknown.

16:21:03 9 Maybe less important to the people in
16:21:05 10 the room but still important to some people, is
16:21:08 11 that the EIS would be covering the North
16:21:11 12 Pacific right whale, and so we can include the
16:21:14 13 areas where that research takes place both off
16:21:17 14 Alaska and possible opportunistic survey
16:21:22 15 locations.

16:21:22 16 The EIS, our purpose and need. The
16:21:25 17 purpose is to provide exceptions to take-hold
16:21:27 18 protections as described and established by the
16:21:31 19 Environmental Protection and Endangered Species
16:21:33 20 Act with the issuance of scientific research
16:21:34 21 permits for specific purposes related to the
16:21:35 22 recovery of the species, and the need for this
16:21:39 23 to facilitate research activities which are
16:21:42 24 likely to result in collecting information that

16:21:44 1 we can use to recover right whales.

16:21:48 2 Proposed action, is to issue permits
16:21:51 3 to qualified individuals and institutions to
16:21:54 4 conduct those research activities deemed
16:21:57 5 critical or essential to the conservation and
16:22:00 6 recovery of right whales. And another term for
16:22:02 7 this is the minimum take level.

16:22:07 8 Another alternative to the proposed
16:22:10 9 action would be to maximum allowable take
16:22:13 10 level. That is research based on the
16:22:14 11 combination of current and future proposed
16:22:16 12 research; so, essentially, on continuing to
16:22:20 13 issue research, unlimited, until just below the
16:22:29 14 jeopardy threshold.

16:22:30 15 And, also, in the process that
16:22:33 16 requires NEPA's "take no action alternative."
16:22:36 17 And in this case the no action alternative is
16:22:38 18 to allow permits that are currently issued to
16:22:42 19 stay in place, but, however, we would not be
16:22:45 20 issuing anymore permits.

16:22:47 21 So what would happen in 2010, all the
16:22:51 22 research permits that have expired, no future

16:22:54 23 research on right whales, and we also will
16:22:57 24 allow modification or amendments, and clearly

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16:22:59 1 recognize that this -- this doesn't meet the
16:23:04 2 mandate to work with the recovery and
16:23:06 3 conservation of the species in the DSA.

16:23:11 4 Some other alternatives that have
16:23:13 5 been considered but may not be carried forward
16:23:15 6 into the future into the EIS, one is a permit
16:23:20 7 moratorium, where we cease all research
16:23:23 8 activities whether your permit has expired or
16:23:25 9 not.

16:23:26 10 And second is suspension of intrusive
16:23:29 11 research, so we would eliminate activities such
16:23:33 12 as tagging and biopsy, and we recognize that,
16:23:35 13 of course, that would not allow people to
16:23:38 14 collect important genetic information.

16:23:40 15 And status quo, another alternative,
16:23:43 16 that would mean that those people who have
16:23:45 17 research permits could, when they expire, could
16:23:48 18 have a new permit, but no one else can get a
16:23:51 19 new permit and not amend or make any changes.

16:23:54 20 So only the researchers that are currently
16:23:55 21 authorized would be authorized into the future.
16:23:57 22 And then, again, we recognize that
16:23:59 23 that would not allow for any kind of evolution
16:24:02 24 of recovery needs or research needs, and,

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16:24:04 1 again, we recognize that these alternatives do
16:24:09 2 not meet the proposed action to manage,
16:24:15 3 conserve and recover Northern right whales.
16:24:18 4 Major environmental issues that are
16:24:20 5 to be addressed in the EIS, first of all, NMFS,
16:24:25 6 information needs, what do we require for the
16:24:28 7 conservation for recovery of the species
16:24:29 8 (indicating). And secondly, the types of
16:24:31 9 research activities to be permitted that
16:24:34 10 includes the geographical scale, the temporal
16:24:38 11 scale, the level of activities, how many takes
16:24:40 12 over what time, how many repeat samplings, all
16:24:45 13 those things are drafted into that. Mitigation
16:24:48 14 measures for research.
16:24:48 15 And then lastly, looking at
16:24:51 16 cumulative impacts of research activities on

16:24:53 17 the right whales and in the environment.
16:24:57 18 And to the advantage of the EIS, and
16:25:01 19 maybe some people in this room don't think
16:25:03 20 there are some, but there are some. The full
16:25:05 21 disclosure of the potential effects related to
16:25:07 22 all research that may be authorized, so looking
16:25:11 23 at everything, being very transparent about
16:25:13 24 that.

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16:25:13 1 And second a comprehensive evaluation
16:25:15 2 of the cumulative effects.
16:25:18 3 Third, the advantage of the EIS in
16:25:20 4 the development of mitigation measures and best
16:25:23 5 management programs for research on right
16:25:26 6 whales.
16:25:27 7 And lastly, the EIS would help
16:25:30 8 produce the need to address environmental
16:25:33 9 impacts at a permit specific level, and those
16:25:35 10 of you who I chatted with at the poster
16:25:37 11 session, essentially this means front loading
16:25:41 12 the NMFS analysis, and everything in the EIS,
16:25:44 13 and that should help later on in processing

16:25:47 14 further permits.

16:25:50 15 So the last part of my presentation

16:25:52 16 is, kind of, to sell you on what we really need

16:25:56 17 from you as the primary researchers on the

16:25:59 18 right whale. We need your information and your

16:26:01 19 input. We really want to encourage you to

16:26:04 20 provide written comments to speak today. And

16:26:07 21 if you look in both the fact sheets and federal

16:26:12 22 register notice of intent, there's a list of

16:26:13 23 specific questions that we hope you look at.

16:26:16 24 Don't feel that that's all you can

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16:26:18 1 comment on, but those are the things you want

16:26:20 2 to consider. And just to walk through those

16:26:22 3 quickly.

16:26:22 4 The first and broad category we would

16:26:24 5 like your comments on are the types of

16:26:27 6 research. Essentially are there critical

16:26:29 7 research needs that are not already identified

16:26:31 8 in the recovery plan; if so, what are those and

16:26:34 9 how do they help the species, and what do they

16:26:38 10 entail. Also, what are the most appropriate

16:26:41 11 methods to obtain the requirement of the
16:26:44 12 recovery plan.
16:26:44 13 We would also like to get your
16:26:46 14 feedback about the level of research effort,
16:26:48 15 how much of a certain activity is enough for
16:26:51 16 management conservation needs, can there be too
16:26:54 17 much? Should NMFS set limits on these
16:26:54 18 activities?
16:26:58 19 For example, should there be
16:26:59 20 different standards or more restrictions for
16:27:01 21 certain age, sex, or reproductive classes, or
16:27:03 22 life history stages; if so, we want to hear
16:27:06 23 from you, what you think those classes or
16:27:07 24 stages are, and what the limitations should be.

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16:27:10 1 And a good example of this, an issue
16:27:17 2 that has come up in the recent past is calf
16:27:19 3 biopsy, and so you can consider that or comment
16:27:21 4 on that.
16:27:21 5 Another area where we want your input
16:27:23 6 is on the coordination of research. What are
16:27:26 7 the most appropriate mechanisms that show the

16:27:28 8 research is coordinated. Should NMFS consider
16:27:33 9 limiting the number of permits to increase
16:27:34 10 coordination; and if so, how is that
16:27:36 11 accomplished.

16:27:36 12 Should researchers operate under
16:27:38 13 different permits or be required to use the
16:27:40 14 same or similar methods so that they can be
16:27:42 15 compared; if so, what are the methods that are
16:27:45 16 most appropriate for different research
16:27:47 17 categories.

16:27:49 18 And I would also like to get your
16:27:51 19 feedback on the qualification of researchers.
16:27:54 20 How much experience should a permit applicant
16:27:56 21 or PIV have before they can get a permit to
16:27:59 22 conduct certain activities.

16:28:02 23 And last, but definitely not least,
16:28:07 24 we would really like to get your feedback on

16:28:07 1 the effects of the research as part of the EIS
16:28:10 2 process, we may be looking at the possible
16:28:12 3 cumulative affects of research on right whales.

16:28:14 4 So if you already have data, you have

16:28:18 5 already written papers, please send us those,
16:28:20 6 that is, citations, references, if you know of
16:28:22 7 other references out there, for instance, it
16:28:24 8 doesn't have to be right whales, it could be
16:28:26 9 other terrestrial mammals, we would like to
16:28:30 10 receive that.

16:28:30 11 And secondly, if you have any good
16:28:33 12 ideas for ways to design the study to look at
16:28:36 13 the effects of research, we would like to hear
16:28:37 14 that, too; essentially conducting research on
16:28:40 15 research, or maybe you already know data sets
16:28:42 16 that are already available that need to be
16:28:45 17 analyzed, to look at those kinds of issues. So
16:28:48 18 please think about all the different categories
16:28:50 19 and subjects, and we really hope to get
16:28:53 20 feedback from you on these issues and other
16:28:55 21 issues that would be incorporated into the EIS.

16:28:58 22 And now we start with the oral
16:29:01 23 comments.

16:29:03 24 MODERATOR MICHAELSON: I think -- I

16:29:09 1 do want to add a couple of extemporaneous

16:29:13 2 comments; and that is, I have been involved in
16:29:14 3 dozens of scoping processes, and the purpose
16:29:16 4 and need is fairly and commonly written, and as
16:29:21 5 the process goes forward, I would have to say
16:29:23 6 this is probably the truly most open-ended and
16:29:28 7 welcoming opportunities for people to be
16:29:30 8 involved in the scoping process that I have
16:29:32 9 been involved in. Oftentimes the scoping
16:29:34 10 process and the purposes are written in such a
16:29:37 11 definitive and fairly defined way, that it
16:29:39 12 doesn't leave a lot of wiggle room. So I hope
16:29:42 13 you listen very carefully to Carrie and Steve.
16:29:45 14 They honestly do need and want your
16:29:48 15 participation in order to make this a
16:29:51 16 successful effort.

16:29:52 17 We have a straight-forward process
16:29:54 18 for this, again. If you have not signed in,
16:29:57 19 and you would like to speak -- I have three
16:29:59 20 people that signed in so far. Because we have
16:30:01 21 an abundance of time, we set the meeting to go
16:30:05 22 to 6:00, and only have three people, we can
16:30:08 23 adopt a special procedure, which is, everyone
16:30:10 24 gets a first helping of four minutes; but after

16:30:12 1 that if no one else wants to talk, you can come
16:30:15 2 back for a second helping, okay. But to make
16:30:19 3 the four minutes work, I have a
16:30:22 4 really sophisticated way of indicating time.
16:30:23 5 When you have been speaking for three minutes,
16:30:25 6 I would put up one finger like this
16:30:27 7 (indicating), and that means you have one
16:30:29 8 minute left.

16:30:29 9 And then when you are at four
16:30:30 10 minutes, I put a closed hand up like that, that
16:30:33 11 allows you to wrap up your comments; but,
16:30:35 12 again, you will be able to come back. That way
16:30:37 13 everyone -- everybody would get one bite of the
16:30:39 14 apple before we come back.

16:30:41 15 And as I mentioned, the meeting is
16:30:43 16 being recorded and there is going to be a
16:30:45 17 transcript.

16:30:46 18 Keep in mind you have other options;
16:30:48 19 in fact, I said it on a couple of sessions and
16:30:52 20 feel fairly confident, if you are here right
16:30:54 21 now and have something to contribute, there's

16:30:56 22 probably a lot more than you want to say that
16:30:58 23 you can say in four minutes, so I'm
16:31:01 24 anticipating that most of you would also want

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16:31:03 1 to take advantage of written comments, and
16:31:05 2 that's where you get involved in a lot more
16:31:09 3 depth and detail.
16:31:09 4 So you have an opportunity to have
16:31:11 5 handwritten comments. We have sheets that are
16:31:13 6 provided. And one thing we do ask is that
16:31:16 7 there's a deadline of January 31st, 2006, for
16:31:19 8 receipt of any written comments. And keep in
16:31:22 9 mind they can be mailed in, they can be emailed
16:31:24 10 in, and they can be faxed in.

16:31:26 11 And I believe in the handouts that --
16:31:28 12 you got them, or want to get them on the way
16:31:31 13 out, those addresses are available on those.

16:31:35 14 And oral and written comments are
16:31:38 15 given equal consideration in this process.

16:31:40 16 There's also information available
16:31:41 17 for review at public libraries, those are
16:31:44 18 listed on the handouts as well.

16:31:46 19 And, basically, they are in the same
16:31:48 20 locations as we will be holding our scoping
16:31:51 21 meetings. They are also available on the NMFS
16:31:56 22 homepage, if you want to access that
16:31:59 23 electronically.

16:31:59 24 Also, if you signed in attendance,

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16:32:01 1 you had an opportunity to check the box about
16:32:04 2 receiving future copies of the draft EIS; so if
16:32:07 3 you want to get those, if you did not sign it
16:32:09 4 yet, again, do that on your way out at the
16:32:13 5 registration. Okay. It says five minute
16:32:15 6 break, but perfect timing, did you get any more
16:32:18 7 of these turned in?

16:32:20 8 MS. HILLER: No, I did not. Would
16:32:22 9 someone like to fill one out now? We can just
16:32:26 10 bring them in and hand him one.

16:32:27 11 MODERATOR MICHAELSON: I would read
16:32:28 12 out the names and the order. I think that's
16:32:31 13 the easiest. Come down here. It's important
16:32:33 14 to use the mike so we can all hear what you say
16:32:37 15 and so the court reporter can capture it.

16:32:39 16 So I would sit out there so you can
16:32:42 17 see my fingers and hand. So you may look at me
16:32:45 18 occasionally, as we are going through this
16:32:46 19 process. The order that they are turned in:
16:32:49 20 Michael Moore, followed by Regina -- sorry, I
16:32:55 21 can't read this or pronounce it --
16:32:56 22 Asmutis-Silva, and Mark Baumgaringer.
16:32:58 23 So, Mr. Moore.
16:33:04 24 MR. MOORE: Thank you. My name is

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16:33:07 1 Mike Moore. I work with Woods Hole
16:33:11 2 Oceanographic Institute in Woods Hole, Mass.
16:33:13 3 First, I would like to recognize the
16:33:14 4 value of the permit process to maximize the
16:33:18 5 information gained and the benefit versus the
16:33:20 6 cost to the individual and/or the population of
16:33:22 7 the right whales; so, I think this is, although
16:33:28 8 a bureaucratic process, it's still a worthwhile
16:33:31 9 thing.
16:33:31 10 Specifically I would like to ensure
16:33:34 11 that the review recognizes the significant
16:33:38 12 long-term regional dwellings that have been

16:33:41 13 observed in right whales in the 1990's, in
16:33:44 14 particular in response to planetary satellite
16:33:49 15 tags and a workshop that reviewed that material
16:33:51 16 in 1999; and I, with the agreement of the
16:33:58 17 office, forwarded that material for inclusion
16:34:01 18 in the review.

16:34:03 19 I should note there's ancient
16:34:07 20 analysis, as much as there's been no further
16:34:10 21 re-analysis of those issues subsequent to that
16:34:14 22 workshop, although there is a pending proposal
16:34:17 23 with the right whale grant program to do so.

16:34:22 24 I think it is, in the light of those

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16:34:25 1 observations, important to encourage the
16:34:28 2 development of non-invasive alternatives for
16:34:31 3 long-term tagging studies in right whales and
16:34:34 4 other large whales, and small whales as well,
16:34:37 5 and dolphins.

16:34:40 6 The only other comment I have is
16:34:44 7 concerning import/export process, and I'm not
16:34:46 8 sure whether the EIS will impact U.S. Fish and
16:34:52 9 Wildlife Service involvement in the export and

16:34:55 10 import process, but it should, if it does not.
16:34:58 11 Because they -- the sighting requirements are
16:35:02 12 part and parcel of the control of how we manage
16:35:07 13 that process. And, in particular, we do fairly
16:35:12 14 routine large whale, right whale recoveries in
16:35:16 15 Eastern Canada and are faced with moving
16:35:18 16 materials from Canada to this country, and this
16:35:21 17 country back up there, and one of the major
16:35:23 18 frustrations is not actually part of the
16:35:27 19 process at all, so you can require and maintain
16:35:30 20 and report on and renew that part of the
16:35:33 21 process quite easily. The export, you can get
16:35:40 22 one at a time with this country and it takes
16:35:43 23 six months to get, even though you plan the
16:35:46 24 research, you may plan when you are going to

16:35:49 1 get the sample you have for export, and with
16:35:52 2 that is also the issue of the designated
16:35:56 3 permits, the wildlife issues are limited to
16:36:00 4 Calais, Maine, so if you want to enter the
16:36:03 5 country with material via ferry, you can do
16:36:06 6 that, and so that urging would be to broaden

16:36:13 7 the base to a general multi-port, multi
16:36:19 8 non-designated port destination permit. And
16:36:21 9 that's all I have to say.
16:36:23 10 MODERATOR MICHAELSON: Thank you very
16:36:25 11 much.
16:36:25 12 Regina Asmutis-Silva.
16:36:39 13 MS. ASMUTIS-SILVA: My name is Regina
16:36:40 14 Asmutis-Silva. I am a biologist with the Whale
16:36:42 15 and Dolphin Conservation Society and am also a
16:36:45 16 member of the Atlantic large whale take
16:36:49 17 production team. And I would like to echo
16:36:52 18 Michael's comments on our concerns with regards
16:36:52 19 to invasive research and would like to applaud
16:36:56 20 them for trying to coordinate the research,
16:36:58 21 efforts we believe that all the impacts,
16:37:01 22 including research needed to be considered for
16:37:03 23 the endangered species; however, in addition to
16:37:06 24 that I do have some questions here regarding

16:37:09 1 the proposed action that I think needs to be
16:37:13 2 considered.
16:37:13 3 And saying that, I'm not quite sure

16:37:16 4 what the qualifications, or the qualified
16:37:18 5 individuals or institutions that will conduct
16:37:20 6 the research would be and exactly what NEPA is
16:37:24 7 considering right now for low priority versus
16:37:27 8 high priority research and how that would be
16:37:31 9 conducted. As a member of the take-production
16:37:33 10 team and participant in a number of meetings on
16:37:37 11 shipping and fishing issues, there's been no
16:37:39 12 resolution to a lot of things that are causing
16:37:42 13 a depletion of the population, and partly
16:37:45 14 because of absence of information. So I'm very
16:37:48 15 concerned that if the permits are not granted
16:37:49 16 and there's a delay in some of the information
16:37:51 17 that is critical in order to get the
16:37:53 18 information that we need for some of the
16:37:56 19 issues, like how do whales use the bottom part
16:38:00 20 of the water home, so that we are not go going
16:38:02 21 to be able to resolve issues like the fisheries
16:38:05 22 and shipping. And I'm concerned with a
16:38:07 23 moratorium or possible moratorium, or where
16:38:09 24 some of the delays are going to be made and in

16:38:11 1 regards -- there has to be a balance, but not
16:38:14 2 eliminate the research that is going on with
16:38:15 3 the right whales. It's important for their
16:38:18 4 future survival.

16:38:19 5 MODERATOR MICHAELSON: Thank you.

16:38:22 6 MR. BAUMGARINGER: I would hold my
16:38:24 7 comments.

16:38:25 8 MODERATOR MICHAELSON: All right. So
16:38:28 9 Scott Kraus.

16:38:40 10 MR. KRAUS: I was going to say
16:38:43 11 something clever, without notes, but didn't
16:38:44 12 have time. I am with the New England Aquarium
16:38:47 13 in Boston, and also a member of the
16:38:49 14 take-production team, the technical advisor of
16:38:51 15 the team, and probably some other things.

16:38:57 16 MODERATOR MICHAELSON: Speak up just
16:38:57 17 a little bit.

16:38:58 18 MR. KRAUS: I think I have two, maybe
16:39:00 19 three points that I would like to make. The
16:39:02 20 first one is, as far as I can tell, there's no
16:39:05 21 quantitative or scientific way to assess
16:39:10 22 cumulative impacts. And the terminology is
16:39:12 23 misleading, because we are actually looking for

16:39:15 24 examples for cumulative impacts on the failure

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16:39:18 1 of reproduction, and we cannot figure out of

16:39:21 2 15 -- well, let's say, out of about six

16:39:24 3 well-defined hypotheses, we can't figure out

16:39:26 4 which one of those things is actually

16:39:27 5 contributing to the failed reproduction.

16:39:29 6 I therefore find it almost

16:39:32 7 impossible to believe that we can find an

16:39:33 8 objective and quantifiable way to assign

16:39:37 9 cumulative impacts on research activities on

16:39:39 10 right whales. And that worries me. Because

16:39:44 11 these kinds of decisions that will be made in

16:39:45 12 the absence of, as far as I can tell, peer

16:39:48 13 review from outside researchers who actually do

16:39:51 14 work in the field, most of the permitting

16:39:53 15 decisions have been made in the absence of peer

16:39:55 16 reviews for people who know what they are

16:39:58 17 talking about.

16:39:58 18 And one example, I will tell you, one

16:40:00 19 of the biological opinions on my permitting was

16:40:03 20 denied on the permitting of calves because the

16:40:06 21 researchers have a difficult time telling a
16:40:09 22 calf from adult right whales. Now, I bet you
16:40:12 23 that I could teach even a lawyer to tell the
16:40:15 24 difference between a calf and an adult in about

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16:40:18 1 30 seconds. And I don't think that this clause
16:40:24 2 was written by anybody who knew anything about
16:40:27 3 marine mammal science. And that worries me.
16:40:30 4 Because the cumulative impact piece is very
16:40:33 5 dangerous ground to be treading on when you
16:40:35 6 don't know, or you have an objective way to
16:40:38 7 quantify the data.

16:40:41 8 The second thing I worry about is
16:40:43 9 that this process, which I may be the most
16:40:48 10 egregious example in the room, has dragged on
16:40:51 11 for years, and looks like at least two more
16:40:53 12 years, and let's imagine that somebody found or
16:40:58 13 had some evidence that, let's say, something
16:41:00 14 like magnetism or electricity had some ways of
16:41:05 15 keeping whales away from fishing areas.
16:41:07 16 Because it does not appear anywhere in any of
16:41:09 17 the context in the kind of scope of activities

16:41:13 18 that might be permitted under this EIS, you
16:41:16 19 might have to start a new EIS.

16:41:17 20 The whole purpose of research is
16:41:19 21 actually to find out things that we don't know
16:41:22 22 yet. And when you actually find out things it
16:41:25 23 leads you in a new direction. This process is
16:41:27 24 going to stop it. So let's imagine you had

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16:41:30 1 some sort of a magnet that actually keeps
16:41:33 2 whales away from fishing areas, you would not
16:41:35 3 be able to test it because you are going to
16:41:37 4 have to go through this process again because
16:41:40 5 it doesn't appear in this EIS.

16:41:42 6 And that kind of -- that kind of
16:41:45 7 problem is something that you are all going to
16:41:47 8 be facing whatever field you are in, in this
16:41:49 9 kind of activity, because we cannot anticipate
16:41:49 10 that.

16:41:54 11 I think the third thing that is, of
16:41:56 12 course, most, I think, grating to many of the
16:42:00 13 researchers in this room, is that while this
16:42:03 14 process grinds on and the activities of

16:42:08 15 researchers are subject to such incredible
16:42:11 16 scrutiny, including lawsuits, whales are dying
16:42:15 17 at extraordinary rates. And as far as we can
16:42:17 18 tell the shipping industry, nor the fishing
16:42:21 19 industry, have any permits to do so, at least I
16:42:24 20 have not seen that. And that kind of inequity
16:42:27 21 leads me to believe that what we need is a
16:42:28 22 tiered system for evaluating effects that is
16:42:31 23 different than just level A/B harassment. It
16:42:35 24 actually looks at the potential for serious

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16:42:37 1 impact on the population at different levels
16:42:41 2 and revises the permitting process to take that
16:42:45 3 into account.
16:42:45 4 So if you want to go look at whales
16:42:48 5 and take pictures and go inside the 500 yards,
16:42:51 6 that's a process that takes you a few months to
16:42:53 7 do so. If you want to biopsy or do something
16:42:54 8 like that, maybe that takes a year. But if you
16:42:57 9 want to do something more invasive than that,
16:43:00 10 or you wanted to test large scale sonar over
16:43:05 11 vast areas of the ocean, and maybe that's a

16:43:07 12 bigger impact, that should be evaluated
16:43:10 13 separately.
16:43:17 14 MODERATOR MICHAELSON: I just want to
16:43:19 15 say that the kinds of comments we received
16:43:21 16 already, so far, are entirely apropos to, I
16:43:26 17 think, what NMFS is looking for. In the sense
16:43:26 18 that instead of you asking them, well, what do
16:43:29 19 they think; they are really asking you now what
16:43:31 20 do you think. For example, somebody mentioned
16:43:35 21 what does NMFS think is a qualified individual,
16:43:39 22 they are asking you right now to tell them what
16:43:41 23 you think a qualified individual looks like.
16:43:43 24 So if you go back to those questions

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16:43:45 1 that Carrie had that are on the board there,
16:43:48 2 and take a look at those, and take a look at
16:43:51 3 the notice of intent, they really give you a
16:43:54 4 very good road map to the types of input from
16:43:57 5 you that is going to be very useful in
16:43:58 6 formulating this, and, hopefully, getting to as
16:44:00 7 good of an answer as we can get to.
16:44:02 8 With that, is there anyone else that

16:44:05 9 decided they would like to speak?

16:44:07 10 Why don't you come up here. All I

16:44:08 11 need is your name, and fill one of these out on

16:44:11 12 the back end.

16:44:13 13 MR. ROSSITER: My name is Bill

16:44:15 14 Rossiter. I am with the Cetacean Society

16:44:16 15 International. I'm not a researcher, so I

16:44:20 16 would not try and speak for you folks.

16:44:21 17 But in reading this for the first

16:44:23 18 time, I see it's -- I see the science that you

16:44:26 19 are trying to do, the science is about the

16:44:28 20 freedom to investigate the questions that you

16:44:30 21 think are important. And here it seems as if

16:44:33 22 an unknown group of people, sort of like the

16:44:36 23 WTO, may control what access you have for

16:44:39 24 permits. And already you feel that pressure

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16:44:40 1 because of the delay of permits coming to you.

16:44:43 2 This EIS can be seen as a threat to

16:44:45 3 you. I see it as a threat. And my suggestion

16:44:48 4 is that you come together with some idea of an

16:44:52 5 impartial panel of scientists that NMFS would

16:44:56 6 allow that would advise NMFS, not whose to get
16:44:59 7 the permits for what -- that is, they have
16:45:01 8 implied there's going to be a priority for
16:45:03 9 research questions to be answered. They are
16:45:05 10 going to be under a lot of funding pressures,
16:45:07 11 time related issues and so on, and you have a
16:45:09 12 certain amount of -- you need to feed the
16:45:11 13 family. So it's going to come to a lot of
16:45:13 14 questions here. And I understand why Steve is
16:45:15 15 concerned by the bullet-proof aspects of the
16:45:18 16 lawsuits, they are trying to cover themselves
16:45:20 17 here. Your best way to help them is to be able
16:45:22 18 to advise them directly. And NMFS has to agree
16:45:25 19 on it. I would suggest that they be allowed,
16:45:27 20 that scientists be allowed to advise them on
16:45:30 21 what the priorities should be.

16:45:31 22 This EIS, I think, should designate a
16:45:34 23 group of people that you find and suggest to
16:45:37 24 them that everybody is comfortable with so that

16:45:40 1 they will get the right evidence of who should
16:45:42 2 do the research and on what; and that includes

16:45:45 3 the flexibility so that within a year or so
16:45:49 4 this becomes an issue, somebody with
16:45:52 5 credibility can attack it, what funds does that
16:45:53 6 come out of.

16:45:55 7 My interest is in saving the whales,
16:45:56 8 and yours is, as well. Science is only a tool,
16:45:59 9 it's not putting bread on the table. But I'm
16:46:01 10 hoping you can come up with answers. I don't
16:46:03 11 think the EIS is going to help you come up with
16:46:06 12 the answers the way it is structured now.

16:46:08 13 I'm a bit inflammatory with my
16:46:10 14 general style, but my hope is that you will
16:46:12 15 come together and advise NMFS with an impartial
16:46:16 16 panel. Am I making the point clear?

16:46:23 17 MODERATOR MICHAELSON: Anyone else
16:46:24 18 that would say anything? And sometimes when
16:46:29 19 somebody else speaks you get fired up.

16:46:31 20 Anyone interested in a second
16:46:31 21 helping?

16:46:34 22 Yes?

16:46:35 23 UNIDENTIFIED SPEAKER: I just
16:46:36 24 wondered if it was appropriate in the format we

16:46:38 1 are in to ask questions of Steve; is that

16:46:41 2 something that fits?

16:46:42 3 MODERATOR MICHAELSON: It doesn't fit

16:46:44 4 well with this particular type of format. But

16:46:48 5 that's up to Mr. Leathery to decide whether he

16:46:52 6 would entertain questions or not. But you said

16:46:55 7 you would like a second helping. We can do

16:46:58 8 that first. Okay.

16:47:02 9 MR. MOORE: Michael Moore from Woods

16:47:11 10 Hole Geographic Institution.

16:47:11 11 In the interest of trying to define

16:47:14 12 as many of those magnets as easily as possible,

16:47:20 13 I would like to remind persons of the

16:47:25 14 possibility of non-invasive, long-term tagging

16:47:29 15 as an option, particularly the work that the

16:47:32 16 Woods Hole research shows, and the

16:47:33 17 environmental work, because, obviously, such

16:47:38 18 and such tag is one kind of tag, it's

16:47:40 19 relatively short term; and invasive tagging is

16:47:43 20 a longer tag, and there's the potential for a

16:47:49 21 towed tag as a possibility. There's also

16:47:53 22 floating around here the idea of doing some

16:47:55 23 form of long term tag. Now, all of these
16:48:02 24 things, if they have to be on the horizon to be

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16:48:04 1 part of the EIS, should, then, therefore,
16:48:07 2 should be part of the record; and, I guess I
16:48:12 3 absolutely agree with Scott, these concerns are
16:48:14 4 very real in terms of the scientific community,
16:48:19 5 our ingenuity, and so on, but we have yet to
16:48:21 6 kill a right whale doing science; whereas, God
16:48:25 7 damn it, I have seen so many dead right whales
16:48:29 8 from the shipping industry, and I'm fed up with
16:48:32 9 it. Thank you.

16:48:38 10 MODERATOR MICHAELSON: The difficulty
16:48:39 11 of doing the Q and A -- okay.

16:48:53 12 MR. WOWACEK: Douglas Wowacek. The
16:48:54 13 Oceanography Department of Florida State
16:48:57 14 University.

16:48:58 15 I thought, just for the record, it's
16:49:01 16 worth, again, echoing a couple things Scott
16:49:04 17 said, and maybe stating them a little
16:49:07 18 differently for a different perspective on it.

16:49:09 19 One is the circular process this may

16:49:16 20 really represent. Because as you set out to
16:49:18 21 assess the cumulative impact, if you could do
16:49:21 22 that during a short term impact, one of the
16:49:23 23 ways that that is done is by -- is through
16:49:28 24 research on the impact on the animal from some

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16:49:31 1 activity. And so I hope everyone -- everybody
16:49:36 2 can see the circularity there, you cannot get
16:49:39 3 any information if what you are trying to
16:49:40 4 assess is the accepted methodologies. So I
16:49:44 5 think that's -- and it's -- as it was pointed
16:49:49 6 out, any EIS done on a permitting process --
16:49:51 7 that is one of the reasons, is that you are
16:49:53 8 trying to assess the assessment methods, so I
16:49:58 9 think that's a difficult task. And along the
16:50:01 10 same lines of Dr. Kraus' magnets, to just state
16:50:07 11 it a different way, perhaps not to lose sight
16:50:10 12 of the fact that the activities, research
16:50:18 13 activities, if you strictly restrict them to
16:50:23 14 applications that are very small in focus and
16:50:26 15 scope, you may miss out on some of the more
16:50:30 16 important information we learn from basic

16:50:32 17 biological information. And an extreme example
16:50:34 18 would be the polio vaccine, or things that
16:50:38 19 happen on -- almost by accident, but in the
16:50:41 20 process of basic research.

16:50:42 21 And I think that's what, also, what
16:50:45 22 Scott was trying to get at, but I wanted to
16:50:48 23 add my voice to that. Thank you.

16:50:50 24 MODERATOR MICHAELSON: Do I get

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16:50:57 1 another one? Has anyone else filled one out?

16:51:00 2 Okay. Here is what I think makes
16:51:02 3 sense. That because of the difficulty of
16:51:04 4 getting things on the record, we can ask Mr.
16:51:07 5 Leathery to give a closing comment and close
16:51:10 6 the meeting.

16:51:10 7 And those of you who are getting
16:51:12 8 ready to leave, when you -- if you need to go
16:51:16 9 somewhere, we can allow you to do that and not
16:51:19 10 embarrass you. And then Steve would be happy
16:51:21 11 to come up here and do an informal Q and A.

16:51:32 12 MR. LEATHERY: I want to thank all
16:51:33 13 the speakers for their comments. I think they

16:51:36 14 were all really good comments, and I think
16:51:38 15 those are exactly the kinds of things that we
16:51:41 16 need to hear from the research community.
16:51:43 17 So that's a very sincere thank you
16:51:45 18 for coming and participating in this process.
16:51:49 19 And we can, certainly, we want to hear your
16:51:52 20 formal comments. And as this process goes
16:51:55 21 through, I want to encourage everyone here to
16:51:58 22 feel free to pick up the phone and give me a
16:52:00 23 call and talk personally, one on one, about any
16:52:03 24 issues of concern they might have.

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16:52:04 1 It's one of those important parts of
16:52:06 2 my job, is being available to talk to people
16:52:12 3 and, in my mind, the right whale research
16:52:14 4 community is a very close-knit and almost a
16:52:18 5 model community for a broad research community
16:52:20 6 because of the level of coordination and
16:52:23 7 corporation and communication among and between
16:52:26 8 the researchers.
16:52:26 9 So, again, feel free to give me a
16:52:29 10 yell and talk about your personal permitting

16:52:32 11 issues over the shorter term and longer term,
16:52:35 12 and also about any kind of concerns that you
16:52:37 13 may have.

16:52:38 14 And with that I would close the
16:52:41 15 public record, and then have a little bit of
16:52:44 16 pause, and then I can have your informal
16:52:47 17 question and answers.

16:52:47 18 MODERATOR MICHAELSON: Okay. We are
16:52:50 19 adjourned.

20 (Whereupon the proceedings
21 were adjourned at 5:10 p.m.)

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1 COMMONWEALTH OF MASSACHUSETTS

2 Worcester, ss.

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I, Lisa Lee Gross, Registered Professional
4 Reporter and Notary Public duly commissioned and
qualified in and for the Commonwealth of
5 Massachusetts, do hereby certify that there came
before me on the day 3rd of November, the persons
6 hereinbefore named; their comments reduced to
typewritten record in the matter: Public Scoping
7 Hearing for Proposed Action.

8

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11 In Witness Whereof, I have hereunto set my hand
and affixed my seal this 10th day of November, 2005.

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14 _____
 Notary Public
15 My Commission Expires:
 January 17, 2011

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